

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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**DONALD MACK DOVE,**

**Plaintiff,**  
vs.

**9:09-CV-259 (NAM/DRH)**

**DAVID HARDER, Sheriff, Broome County; and  
MICHELE PARSONS, Nurse Administrator,  
Broome County Jail,**

**Defendants.**

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**APPEARANCES:**

**OF COUNSEL:**

Donald Mack Dove  
10-B-0378  
Attica Correctional Facility  
P.O. Box 149  
Attica, New York 14011  
Plaintiff, *Pro Se*

Smith, Sovik, Kendrick & Sugnet, P.C.  
Suite 600  
250 South Clinton Street  
Syracuse, New York 13202-1252  
Attorney for Defendant

Daniel R. Ryan, Esq.

**Hon. Norman A. Mordue, Chief U.S. District Judge:**

**W MEMORANDUM-DECISION AND ORDER**

In this *pro se* action under 42 U.S.C. § 1983, plaintiff, an inmate in the custody of the New York State Department of Correctional Services (“DOCS”), claims that defendants violated his constitutional rights under the First and Eighth Amendments with regard to his treatment for Hepatitis C and his access to the law library. Defendants moved for summary judgment (Dkt. No. 27) and plaintiff cross moved for summary judgment (Dkt. No. 30). The motions were referred to United States Magistrate Judge David R. Homer for a Report and Recommendation pursuant to

28 U.S.C. § 636(b)(1)(B) and Local Rule 72.3(c). Magistrate Judge Homer issued a Report and Recommendation (Dkt. No. 38) recommending that defendants' motion for summary judgment be granted, plaintiff's cross motion be denied and the complaint dismissed.

Plaintiff has objected to the Report and Recommendation and argues that the Court should grant his cross motion for summary judgment stating that he, "met his burden of showing the absence of deputed [sic] material facts in the forms [of] affidavits and evidence to show that plaintiff was denied medical treatment in violation of the Eight[h] Amendment". Plaintiff interposes general objections regarding his medical treatment for Hepatitis C and does not present any objection to the Magistrate Judge's findings as they relate to his access to the law library.

Given the nature of plaintiff's objection, the Court reviews the Report and Recommendation *de novo*. *See* 28 U.S.C. § 636(b)(1)(C). Where, as here, a party interposes only general objections to a report and recommendation, the Court reviews for clear error or manifest injustice. *See Brown v. Peters*, 1997 WL 599355, \*2-3 (N.D.N.Y.), *aff'd without op.*, 175 F.3d 1007 (2d Cir.1999). Failure to object to any portion of a report and recommendation waives further judicial review of the matters therein. *See Roldan v. Racette*, 984 F.2d 85, 89 (2d Cir.1993).

The Court adopts Magistrate Judge Homer's summary of the record<sup>1</sup> and Report and Recommendation in all respects. The Court has reviewed the record and concludes that the action lacks merit for the reasons set forth in the Report and Recommendation. The objection revisits issues which were addressed in the Report and Recommendation and does not demonstrate a

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<sup>1</sup> Page 2 of the Report-Recommendation reads: "Dove arrived at the Jail on October 22, 2008 . . ." The parties have not objected to this fact, however, based upon the record, plaintiff arrived at Broome County Jail on October 22, 2007. *See* Defendants' Statement Pursuant to Local Rule 7.1(A)(3), ¶ 9.

genuine issue of material fact to warrant a denial of defendants' motion for summary judgment and an award of summary judgment to plaintiff. Accepting as true all of plaintiff's allegations and other submissions, and interpreting them to raise the strongest arguments they suggest, the Court finds that plaintiff does not state a plausible claim to relief under the First Amendment, Eighth Amendment or any other constitutional provision. Accordingly, on *de novo* review, and upon considering plaintiff's objection, the Court accepts the Report and Recommendation and grants defendants' motion for summary judgment.

It is therefore

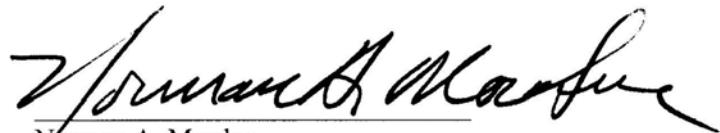
**ORDERED** that the Report and Recommendation by United States Magistrate Judge David R. Homer (Dkt. No. 38) is accepted in its entirety; and it is further

**ORDERED** that plaintiff's cross motion for summary judgment (Dkt. No. 30) is denied; and it is further

**ORDERED** that defendants' motion for summary judgment (Dkt. No. 27) is granted and the action dismissed on the merits.

**IT IS SO ORDERED.**

Date: September 20, 2010  
Syracuse, New York



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Norman A. Mordue  
Chief United States District Court Judge